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THE JOINT COMMITTEE ON THE COMPANIES BILL: A COMMENT ON THE MAJOR AMENDMENTS PROPOSED BY THEM.

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The Bill as originally presented to Parliament was framed largely on the model of the English Act and the recommendations of the Company Law Committee. The Joint Committee have however introduced certain major changes of a sweeping character, especially as regards the abolition of the Managing Agency System, which, being in disregard of the specific recommendations made by the expert committee which was specially appointed to enquire into and report on Company Law Reform, require some consideration.

It would appear that in making their drastic proposals the Joint Committee or rather the majority of them were rather influenced by ideological considerations than by the practical needs of the community. For sometime past it has become the lot (whether happy or unhappy time alone can say) of the people of this Country to serve as laboratory specimens of one of the most elaborate of social and economic experiments now going on. Unless this process in vivisection is moderated by a certain amount of human toleration and practical good sense the process must prove a needlessly painful one.

When the original Bill was published the business interests concerned raised a cry that the provisions of the Bill imposing as they did numerous checks and restrictions and onerous obligations and severe penalties were not conducive to the expansion of existing industries or the promotion of new enterprises. But the restrictions and checks and drastic changes now superadded by the Joint Committee are worse still and such as to actually attenuate the private sector of the country's economy by sapping the very springs of the corporate form of enterprise which, short of thorough-going socialism has been universally acknowledged to be by far the most eminently suitable democratic form of economic organisation for promoting the public good.

The more important of the major amendments suggested by the Joint Committee are as follows :

(1) Certain provisions of the Companies (Amendment) Act LII of 1951 which had been enacted as a temporary measure until the Companies Act is revised on the basis of the Report of the Company Law Committee, conferring special powers on the Central Government requiring its approval for all appointments, re-appointments, changes in Constitution, term of office and remuneration of Managing Agents,

Managing Directors and other Directors of public companies were in the Bill as originally drafted, relegated to a Schedule—Schedule XI, and it was expressly provided by clause 598 of the Bill that those provisions were to remain in force for a period of three years from the commencement of the new Act, and thereafter repealed when experience of its working shows that these special powers are no longer necessary. The Joint Committee have incorporated these provisions in more rigorous form in the body of the Bill and made them permanent. There is no convincing reason given by the Committee for this change, unless it be desired that the Central Government should have both detailed and overall control over the internal affairs of all Companies irrespective of whether any national or public interest is served thereby. One effect of this will be to create an unhealthy desire on the part of company management and their adversaries to seek the aid of pressure-group politics and bring political pressure on Government Departmental executives to achieve their ends.

(2) As regards the managing agency system, the amendments proposed are (*i*) that the Central Government should have power and authority to declare by notification in the Official Gazette that companies engaged in any class or description of industry or business shall not have managing agents after a specified date (section 323); (*ii*) that in respect of any company, the appointment or re-appointment, as the case may be, of a managing agent by the company in general meeting shall not have any validity unless the approval of the Central Government is obtained for it, and the Central Government shall not accord their approval unless they are satisfied that the person appointed is a fit and proper person to hold the office, that the terms of the appointment are fair and reasonable and the appointment itself is not against the public interest (section 325); (*iii*) that while the transfer of his office by a managing agent is rendered void unless approved by the Central Government, succession by inheritance to the office is also forbidden unless in the opinion of the Central Government the successor is a fit and proper person to hold the office (sections 342, 343 and 344); (*iv*) that where the managing agent is a firm or body corporate, any change in the constitution of the firm or body corporate shall cease to have validity unless approved by the Central Government under the conditions stated (section 345); (*v*) that no person (whether individual, firm or body corporate) shall after the 15th August, 1960, be the managing agent of more than ten companies (private companies which are not subsidiaries of public companies being exempted) irrespective of the nature, size and importane of the undertakings of those companies (section 331)."

In respect of these provisions one is left wondering as to why the approval of the Central Government is required in the case of all companies whatever may be their status or nature of their business. One can understand Government interference on the ground of public or national interest as regards any particular undertaking or class of undertakings. If Government is to interfere in other cases, it is brazen State Socialism of the worst Hitlerian type. It is upto Parliament to ponder over the dangerous consequences of Government interference in all matters of private business activity, even though no public interest is involved in it. Under the Industries (Development and Regulation) Act as amended by Act XXVI of 1953 there is ample provision in Chapter III-A which is headed "Direct management or control of industrial undertakings by Central Government" in certain cases for checking mismanagement of industrial undertakings of national importance and considered essential to the life of the community.

As regards termination of the managing agency system section 323 vests the Government with an extraordinary power, the exercise of which is liable to be influenced by political considerations. With the Damocles' Sword always hanging over their heads, working companies will have to carry on in an atmosphere of uncertainty and unbalance while initiative and enterprise will get damped and cramped. The psychological effect is likely to be more disastrous than the physical effect.

(3) Another amendment of doubtful utility but potent for mischief is the introduction of a new provision by section 407, giving parallel power to the Central Government co-extensive with the power given to the Court under sections 396 to 406 (corresponding to the provisions of section 153-C of the existing Act), to appoint from out of members of the company two additional Directors whenever on the application of members holding not less than one-tenth of the total voting power, that Government is satisfied that the affairs of the company are conducted in a manner oppressive to any members or prejudicial to the interests of the company. In the case of an application to the Court there is sufficient protection against possible mischief and malice, in the elaborate procedure prescribed for enquiry and disposal of the case in a judicial manner, but where the application is made to Government the latter can act at their own discretion in a summary manner.

The section does not even provide for the company affected being given an opportunity of being heard. If there is any provision in the Bill which gives scope for mischief-makers to invoke the interference of Government for their own selfish ends, it is this section first and foremost. The introduction of two hostile persons in the Board of Directors of a Company will not only paralise its management but will be a certain road to bring the company to ruination. The hostile elements in the Directorate will lose no time in availing themselves of every possible provision in the Act to bring the company's management to disrepute, unless one and all of the Directors make abject surrender to them. The section is a direct invitation to busy bodies among the minority elements in the company to blackmail the Directorate by threatening to seek the interference of the Central Government wherever possible. Pressure-group politics will come into play and whichever side is able to influence the Government will have the day.

(4) The amendment introduced by section 331 which enacts that no person, firm or body corporate, shall hold office as managing agent of more than ten companies, irrespective of the kind or kinds or size of business carried on by the managed companies is useless for good and will serve no purpose. A single company can, if so authorised by its Memorandum, carry on any number of businesses to an unlimited extent in the same manner as several companies carrying on one business each; and the profits earned by one giant company may far exceed the total profits of a hundred small undertakings, and give to its managing agent for his proportionate share far larger profits than many small companies put together. The amendment by itself is innocuous and may simply induce managing agents to concentrate their activities on the development of ten or less companies instead of diffusing their energies over numerous independent concerns of small size. In the case of new companies the purpose will be sought to be achieved by making the objects clause of the Memorandum of each company as wide as possible, so that each may engage in as many undertakings as it can.

(5) One other matter which calls for notice is the question of the appointment of a Central Authority to administer the Act. In this respect the Joint Committee

have expressed themselves emphatically in favour of the Central Government directly assuming responsibility instead of shifting the responsibility to any independent body as suggested by the Company Law Committee. "The Committee are of opinion that responsibility for the due fulfilment of the functions assigned by the Bill to the Central Government should squarely be placed on the Government and that nothing should be done to impair or obscure this responsibility (Notes on clauses, para. 147). Accordingly the Committee have enacted section 630 curtailing the power of delegation of their powers by the Central Government and provided by section 409 to 414 for the retention on a permanent footing of the Advisory Commission set up under the Act LXII of 1951 for advising Government not only in respect of the specific matters provided by that Act but also in respect of certain other matters. The responsibility of Government under the Bill if it is passed into an Act is very heavy and its powers have to be exercised with reference to as many as 125 statutory provisions, and this in relation to companies numbering about 20,000 at the present moment and likely to grow further in the near future. If Government is to discharge its responsibilities properly, an efficiently equipped Department under a separate Ministry (as suggested in the Minute of Dissent of Messrs. Kilachand and Somani) and staffed by able men of the highest character will have to be set up; and even that will be ineffective unless the functions of the Advisory Commission are widened and the Commission entrusted with the task of inquiring into and advising on all matters requiring Government sanction or approval before the final decision is taken up by Government. The powers given to the Advisory Commission under section 410 will have to be extended to all matters in respect of which the Central Government has a duty to perform or power to exercise under the Act.

THE LATE SIR M. D. DEVADOSS.

It is with deep regret that we have to record the death of Sir M. David Devadoss, retired Judge of the Madras High Court, on Monday (11th July, 1955) at his residence. Sir David Devadoss, was 86 and in normal health and he passed away rather suddenly. He is survived by one son and four daughters. We offer our heart-felt condolences to the members of the bereaved family.

Tributes were paid in the High Court on Tuesday morning to the late Sir David Devadoss, both as a man and as a Judge, by His Lordship the Chief Justice and as a token of regard and mark of respect to the deceased, the Chief Justice adjourned the work of the Bench for an hour.

Born in Tirunelveli district on December, 18, 1868, Sir Devadoss had his early education from the C. M. S. High School, Palayamcottah, and his higher education in the Hindu College, Tirunelveli and the Presidency College, Madras. He took his B.L. degree in 1891. He was enrolled as a vakil in Madras in 1892. After serving a course of apprenticeship under Mr. Gantz, a well-known Attorney of the High Court, he practised in the Courts of Tirunelveli district from 1892 to 1908. He was the Secretary of the Provincial Lawyers' Conference held in 1906. During 1908 to 1909 he qualified himself as a Barrister-at-law and was called to the Inner Temple in 1909. He was enrolled as an Advocate of the Madras High Court in the same year. While practising in Madras, he was connected with the management of a number of Christian institutions. He presided over the All-India Christian Conferences held in 1917 and 1931. He was a Councillor of the Madras Corporation from 1917 to 1921 and a member of the Madras Legislative Council from 1919 to 1921. He became a Judge of the Madras High Court in November, 1921 and continued as a judge till his retirement on December 17, 1928. He became a member of the Council of State in 1930. He was the Vice-President of the Cosmopolitan Club for some years and was also intimately connected with the Masonic Lodge.